

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.2921 OF 2002

IN

SUIT NO.3413 OF 2002

Ms. Shamim Moiz Kaka ...Plaintiff

 $v/s.$

Pradeep Sharma ...Defendant

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Mr.Sudeep Sen i/b Desai & Diwanji for the Plaintiff.

Mr.A.K. Singh for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 2nd September, 2004

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed this suit for a decree of declaration that the Defendant is the trespasser in the premises and that he should be directed to hand over possession of the premises to the Plaintiff. The case of the Plaintiff is that she is tenant of the prmsies being room No.305. According to the Plaintiff, she provides mail-box facility to various members. There are three cabins in that room, which are also given to the members. According to the Plaintiff, the Plaintiff entered into an agreement with the Defendant dated 23rd September, 1998 for membership. According to the Plaintiff she gave him one cabin for use along with furniture and he was also permitted to use the mail box facility. According to the Plaintiff, she went out of India to her son in Australia in the year, 2000. She was to come back within a year but as the Plaintiff's husband was not keeping good health, she had to extend her stay and in the year 2002 she came back. On coming back she found that the Defendant is occupying the entire room to the total exclusion of

the Plaintiff. Therefore, the Plaintiff has filed this suit under Section 6 of the Specific Relief Act.

2. The Defendant does not deny the agreement between the parties dated 23rd September, 1998. But according to the Defendant, on the very next day i.e. 24-9-1998, the Plaintiff entered into the memorandum of understanding with the Defendant giving him the entire premises for consideration of Rs.4,50,000/-. The Defendant states that he has made payment as per that agreement. According to averments in the affidavit, the agreement dated 24-9-1998 is signed by the Plaintiff, copy of which is at Exh.A to the affidavit of the Defendant dated 3rd July, 2003. The Plaintiff has in the rejoinder explained the payment made by the Defendant from time to time. According to the Plaintiff, all the payments are under the agreement dated 23-9-1998.

3. Thus, it is clear that the entire case of the Defendant depends on the alleged agreement dated 24-9-1998. As per the averments in the affidavit dated 3rd July, 2003 of the Defendant, this agreement is between the Plaintiff and the Defendant and it is

signed by the Plaintiff. Copy of the agreement which is produced at Exh.A to that affidavit shows that it is signed not by the Plaintiff, but by her manager. The learned Counsel appearing for the Defendant stated before me, this manager was none other than the husband of the Plaintiff. Thus, as the document does not confirm to version of the document that is given in the affidavit, I asked the learned Counsel to show me averments that the husband of the Plaintiff, according to the Defendant, was her manager who was authorised by the Plaintiff to sign the agreement on her behalf. No such averments can be shown by the learned Counsel. Thus, it is clear that the document at Exh.A to the affidavit dated 3rd July, 2003 is incapable of being relied on, because averments in the affidavit themselves are contrary to the copy of the document. I also find it difficult to believe that within a day the Plaintiff would change her mind and agree to give the entire premises to the Defendant. Thus, I find that the Defendant does not have any authority to be in possession of the premises.

4. Taking overall view of the matter, therefore, in my opinion, it would be appropriate to appoint the

Receiver on the premises. The learned Counsel for the Defendant states that in that case the Defendant may be appointed as agent of the Receiver. In this view of the matter, therefore, in my opinion, following order would meet the ends of justice.

O R D E R

(i) Notice of Motion is granted in terms of prayer clause (a), excluding bracketed portion.

(ii) The Court Receiver shall take only symbolic possession and shall offer appointment of agent of the Receiver to the Defendant on usual terms and conditions including security and royalty.

(iii) If the Defendant does not execute the agency agreement within a period six weeks from the date on which offer is made by the Receiver to the Defendant, the Receiver shall take physical possession of the premises, if necessary by taking police help and hand over the premises to the Plaintiff as also the agent of the Receiver on usual terms and conditions, except condition of security and royalty.

(iv) Till the Receiver takes possession, ad-interim order in terms of prayer clause (b)(i) shall operate.

(v) At the request of the learned Counsel for the Defendant, it is directed that the Receiver shall take steps pursuant to this order only after a period of four weeks from today.

(vi) Court Receiver & parties to act on ordinary copy of the order duly authenticated by the Associate/ Personal Secretary of the Court as a true copy.

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